

## **REMARKS**

### **A. Supplemental Information Disclosure Statement**

On June 30, 2003, Applicants filed a Supplemental Information Disclosure Statement. Unbeknownst to the Applicants, a Final Office Action was mailed previously on June 30, 2003. In order to have the Supplemental Information Disclosure Statement considered, Applicants are filing concurrently with the present Amendment a Declaration in accordance with 37 C.F.R. § 1.97(e)(1)-(2) and having their deposit account charged in the amount of \$180 pursuant to 37 C.F.R. § 1.17(p). Since the requirements of 37 C.F.R. § 1.97(d) have been met, Applicants request that the Supplemental Information Disclosure Statement be considered.

### **B. Finality of Office Action**

As mentioned above, the Office Action mailed on June 30, 2003 was made final. Applicants traverse the finality of the Office Action. In the previous Office Action mailed on February 26, 2003, claims 19 and 21-23 were rejected under 35 U.S.C. § 103 in view of Pacquet and Beatenbough. Furthermore, claims 24, 25 and 28-33 were rejected under 35 U.S.C. § 103 in view of Pacquet and Poles et al. In response to the Office Action, Applicants filed an Amendment where claims 19, 21-25 and 28-33 were not amended.

The Final Office Action mailed on June 20, 2003 has rejected claims 19 and 21-23 as being anticipated by Gawthrop et al. under 35 U.S.C. § 102(a) and claims 24, 25 and 28-33 as being obvious under 35 U.S.C. § 103 in view of Gawthrop et al. and Poles et al. Furthermore, claim 28 was rejected for the first time under 35 U.S.C. § 112, second paragraph. Since Applicants' Amendment is not the cause for the new rejections of claims 19, 21-25 and 28-33, the Office Action mailed on June 20, 2003 was improperly made final. MPEP § 706.07(a).

Accordingly, Applicants request that the finality of the Office Action mailed on June 20, 2003 be withdrawn.

**C. 35 U.S.C. § 112**

In the Office Action mailed on June 20, 2003, claim 28 was rejected under 35 U.S.C. § 112, second paragraph for being indefinite. In particular, the term “said top manifold” was deemed indefinite. Claim 28 has been amended to replace the offending phrase with “said first manifold.” Since the claim is definite in meaning, the rejection has been overcome and should be withdrawn.

**D. 35 U.S.C. § 102**

**1. Claims 1-4 and 6-8**

Claims 1-4 and 6-8 were rejected under 35 U.S.C. §102(a) as being anticipated by Gawthrop et al. Applicants traverse this rejection. Gawthrop et al. was published July 4, 2002 which is after January 31, 2002, the filing date of the present application. Since Gawthrop et al. was not published prior to January 31, 2002, the rejection is improper.

Despite the impropriety of the rejection, claims 1-4 and 6-8 have been canceled and so the rejections have been rendered moot and should be withdrawn.

**2. Claims 19 and 21-23**

Claims 19 and 21-23 were rejected under 35 U.S.C. §102(a) as being anticipated by Gawthrop et al. Applicants traverse this rejection for several reasons. First, as mentioned above in Section D.1, Gawthrop et al. does not qualify as prior art under 35 U.S.C. §102(a). Second, claim 19 recites that the volumes of the first and second manifolds are substantially the same magnitude. Gawthrop et al. discloses that the manifolds 54 and 64 do not have volumes that are

substantially the same magnitude. As mentioned at page 9, lines 1-5 of Applicants' specification with respect to the embodiment of FIG. 3, having the volumes substantially the same in magnitude allows for a minimal amount of refrigerant charge being required to provide the maximum benefit under all load conditions. Accordingly, Gawthrop et al. does not anticipate claim 19, even if Gawthrop et al. qualifies as prior art.

**E. 35 U.S.C. § 103**

**1. Claims 5 and 9-18**

Claims 5 and 9-18 were rejected under 35 U.S.C. §103 as being obvious in view of Gawthrop et al. and Poles et al. Claims 5 and 9-18 have been canceled. Accordingly, the rejection has been rendered moot and should be withdrawn.

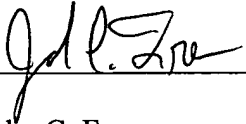
**2. Claims 20 and 24-33**

Claims 20 and 24-33 were rejected under 35 U.S.C. §103 as being obvious in view of Gawthrop et al. and Poles et al. Claim 20 depends directly on claim 19 which recites that the volumes of the first and second manifolds are substantially the same magnitude. Independent claim 25 also recites that the volumes of the first and second manifolds are substantially the same magnitude. As mentioned above in Section D.2, Gawthrop et al. does not disclose or suggest that the manifolds 54 and 64 have volumes that are substantially the same magnitude. Poles et al. also does not suggest altering the volumes of manifolds 54 and 64 of Gawthrop et al. to have substantially the same magnitude. Without such suggestion, the rejection is improper and should be withdrawn.

### CONCLUSION

In view of the arguments above, Applicants respectfully submit that all of the pending claims 19-33 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

Respectfully submitted,



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Dated: August 20, 2003



CERTIFICATION UNDER 37 C.F.R. § 1.97(e)(1)-(2)

I, John C. Freeman, certify that each item of information, except for U.S. Patent No. 5,178,211, contained in the Supplemental Information Disclosure Statement filed on June 30, 2003 in U.S. Patent Application Serial No. 10/066,290 was first cited in a Search Report regarding United Kingdom Patent Application No. GB 0300500.6, which is the British counterpart of United States Patent Application Serial No. 10/066,290. The United Kingdom Search Report was mailed on May 30, 2003 which is not more than three months prior to the filing of the above-mentioned Supplemental Information Disclosure Statement.

I further certify that U.S. Patent No. 5,178,211 contained in the above-mentioned Supplemental Information Disclosure Statement was not cited in a communication from a foreign patent office in a counterpart application, and to my knowledge, after reasonable inquiry, U.S. Patent No. 5,178,211 was not known to any individual designated in § 1.56(c) more than three months prior to the filing of the above-mentioned Supplemental Information Disclosure Statement.

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